

Spring 2018

Human Rights Law and Policy

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HUMAN RIGHTS LAW AND POLICY
DIPL 4106AA
Professor Miller

Spring 2018

COURSE DESCRIPTION

What are human rights? What do they promise and how often is that promise achieved? This class will examine the law, politics, policy, and advocacy practices of human rights, focusing on the *dilemmas* that ensue. Although much of our class will focus on human rights as law and through legal mechanisms and institutions, we will also analyze the political, policy, and philosophical implications of human rights. On the legal front, we will explore the role of international and domestic law in enacting and enforcing human rights claims, the institutions of international human rights law, and the relationships between different types or “generations” of rights. In the realms of both law and policy, we will be examining the *stories* told about human rights – what it does, what it can do, what’s wrong or right about it, how it helps some groups, to whom it applies and when. Throughout the course, we will pay special attention to three sets of questions:

- How can one most effectively mobilize a human rights agenda? What tools do you have at your disposal? Is military intervention a useful way to enforce human rights? Is litigation the best way to promote a particular human right? Criminal prosecution? Naming and shaming? Protest? Are human rights an end in themselves or one part of a larger strategy?
- Today, we are confronted with a rising tide of poverty and many types of inequality. Do human rights have anything to say about poverty or inequality? Should they?
- Are human rights “part of the problem” or part of the solution? Do they mobilize or demobilize activism? Are human rights about emancipation and liberation or about neo-colonialism and global inequity? Or all of the above?

We will be reading both legal cases and materials and scholarly commentary on the meaning and practice of human rights. By the end of the semester, students should have developed knowledge of the key concepts, doctrines and debates involved in the study of international human rights law. Students will also develop familiarity with legal reasoning and analysis. Law is, centrally, about making arguments; in reading and analyzing a wide variety of international legal cases, issues, and doctrines, students will become skilled at identifying, critiquing, and developing legal arguments. The course will also help students to develop critical reading and writing faculties that extend beyond the legal field. Students will learn how to think like a lawyer, like a critic, and like an advocate – and sometimes how to think like all three at the same time. As a movement, a set of institutions, and a body of law, human rights promises a great deal. We will take those promises seriously as we ask how, whether, and where they are disappointed or fulfilled.

COURSE MATERIALS

The readings for this course will draw from a combination of assignments from the textbook and additional materials on Blackboard.

Philip Alston and Ryan Goodman, International Human Right: Texts and Materials (The Successor to *International Human Rights in Context*), Oxford University Press, 2013

Readings from the text are marked as “A&G”. All other readings are on Blackboard. **The reading assignments listed below are subject to modification.** I will notify you through email with any changes as well as posting on Blackboard; **you are responsible for any information that is posted on Blackboard in an announcement or other class information.**

If you have not taken Public International Law (or are eager for a refresher), you may want to take a look at one or both of the following short texts:

Mark Janis, *An Introduction to International Law* (2012)

David Bederman and Chimène Keitner, *International Law Frameworks* (2016)

EVALUATION

- **Reaction Papers:** Over the course of the semester, you will write **3 reaction papers** that address two or more readings from that week. I will post a list of assignments for reaction papers on Blackboard. A reaction paper should be 500 words.
 - Reaction papers are always **due Sunday at 6:00PM** before class.
 - The papers will be graded on a check/check plus/check minus system.
 - Late papers will be graded down a third of a grade; papers that are more than 3 days late will not be accepted. Together, the reaction papers will constitute 25% of your grade.
- **Participation:** I expect consistent, substantive, high-quality participation in class discussions. During the weeks for which you have been assigned a reaction paper, you should consider yourself “on call”, meaning I reserve the right to call on you for comments about the readings. Participation throughout the semester constitutes 15% of your grade.
- **Midterm Paper:** I will distribute a prompt later in the semester. The paper will not require outside research and will make up 30% of your grade.
- **Take Home Exam:** There will be one cumulative exam for this class due during final exam period. More details forthcoming as we approach the end of the semester. The final will be 30% of your grade.

ATTENDANCE AND PARTICIPATION

Attendance, reading, and participation are not optional. This class depends upon full participation. We will often spend part of the class in groups discussing the readings; not participating regularly will hurt your grade.

If due to circumstances beyond your control, you have to miss a class, please alert me by e-mail **BEFORE** class. Barring exceptional circumstances, you are responsible for the class reading for any missed class. If you miss more than two classes over the course of the semester, you will lose points from your final grade. **Excessive absences will result in a failing grade** for this course.

ACADEMIC INTEGRITY

All forms of dishonesty, whether by act or omission, including, but not limited to, cheating, plagiarism, and knowingly furnishing false information to the University, are prohibited.

Work submitted in courses must be the product of the efforts of the student presenting the work, and contributions of others to the finished work must be appropriately acknowledged. The presentation of another's work as one's own is a serious violation of the academic process.

Plagiarism and other forms of academic dishonesty will be reported to the administration, and may result in a lowered or failing grade for the course and up to possible dismissal from the School of Diplomacy. See university and school standards for academic conduct here:

<<http://www13.shu.edu/offices/student-life/community-standards/upload/Seton-Hall-University-Student-Code-of-Conduct.pdf>>

<<http://www.shu.edu/academics/diplomacy/academic-conduct.cfm>>

Plagiarism. In a paper, where you quote language word for word from a source, you must place it in quotation marks or in a block quote and give the exact source for each quoted passage. Where you paraphrase something, you must cite the source. Where you refer to or use an author's insight or idea, you must cite the source. Lifting or paraphrasing language from a web site without indication and citation is plagiarism. Exception: in a case brief, you may quote the language of the case itself without a citation.

Any indication of plagiarism will result in a failing grade for the assignment and a reduction in the participation grade for the class. A repeated incident of plagiarism (i.e., more than one) is likely to result in a failing grade for the class and will be reported to the administration.

ELECTRONICS

More than one study has concluded that taking notes by hand rather than by typing improves learning; when you cannot transcribe but rather have to translate class discussion and lecture into hand-written notes, you are far more likely to retain the information in more detail and for

longer.¹ The temptation to multitask while you are on a computer not only reduces your participation but negatively affects those around you.²

While I do not prohibit the use of laptops in this class, I encourage you to consider taking notes by hand and either using your computer only to refer to readings if necessary. **All use of electronics for any purpose other than notetaking or referencing readings is prohibited.** If you use your laptop for anything else, you will be subject to discipline, including reduction in grades. If I find laptops to be a consistent distraction in class, I will ban them.

Please know that I have absolutely no tolerance about the use of mobile phones in the classroom. **If I see your cell phone on your desk or in your hand during class, I will confiscate it for the remainder of class.** If you have an emergency situation that requires you to check your phone or email during class, please let me know before class.

INCOMPLETES

Incompletes will be given only in exceptional cases for emergencies. Students wishing to request a grade of Incomplete must provide documentation to support the request accompanied by a Course Adjustment Form (available from the Diplomacy Main Office) to the professor *before* the date of the final examination. If the incomplete request is approved, the professor reserves the right to specify the new submission date for all missing coursework. Students who fail to submit the missing course work within this time period will receive a failing grade for all missing coursework and a final grade based on all coursework assigned. Any Incomplete not resolved within one calendar year of receiving the Incomplete or by the time of graduation (whichever comes first) automatically becomes an “FI” (which is equivalent to an F). It is the responsibility of the student to make sure they have completed all course requirements within the timeframe allotted. Please be aware that Incompletes on your transcript will impact financial aid and academic standing.

INCLUSIVE LEARNING

It is the policy and practice of Seton Hall University to promote inclusive learning environments. If you have a documented disability you may be eligible for reasonable accommodations in compliance with University policy, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and/or the New Jersey Law against Discrimination. Please note, students are not permitted to negotiate accommodations directly with professors. To request accommodations or assistance, please self-identify with the Office for Disability Support Services (DSS), Duffy Hall, Room 67 at the beginning of the semester. For more information or to register for services, contact DSS at (973) 313-6003 or by e-mail at DSS@shu.edu.

OFFICE HOURS AND CONTACT INFORMATION

¹ <http://www.newyorker.com/tech/elements/the-case-for-banning-laptops-in-the-classroom>.

² <http://www.sciencedirect.com/science/article/pii/S0360131512002254#>.

My office hours are **Mondays, 9:00 - 10:30AM** and **Wednesdays, 11:00am – 12:30pm** in McQuaid Hall 101-B. I am also available after class and by appointment. Please do not hesitate to come talk to me. My extension is 2461 and my e-mail address is Zinaida.Miller@shu.edu.

Part I. Introductions: International Law, Human Rights, and History

Class 1 (January 22)

Introduction to the Course

Class 2 (January 29)

History and Human Rights

Precursors and Origin Stories

1. Precursors

- Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010 (pp. 3-8)

2. Human Rights Starts (mostly) with the Universal Declaration

- A&G 135-54

3. Human Rights as We Know It Started in the 1970s

- Sam Moyn, "Human Rights in History," *The Nation* (August 11, 2010)
- Antony Anghie, "Whose Utopia? Human Rights, Development and the Third World," *Qui Parle: Critical Humanities and Social Sciences*, 22(1): 63-80 (Fall/Winter 2013)

4. Human Rights Started with the Fight Against Slavery

- Adam Hochschild, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves* (2005), 1-8
- Jenny Martinez, *The Slave Trade and the Origins of International Human Rights Law* 148-171

5. Are Human Rights Over?

- Stephen Hopgood, Preface, *The Endtimes of Human Rights* (2013)

Class 3 (February 5)

Introducing International Law and Human Rights

Introduction to International Law

- A&G 72-89 (Custom and Soft Law)
- A&G 113-118 (Treaties)

Introduction to Human Rights

- Frédéric Mégret, "International Human Rights Law Theory" (excerpts)

Case Study: The Death Penalty

- A&G 18-41, 51-56 (Pay attention to the differences between the South African and U.S. approaches in *Makwanyane* and *Roper*)

Part II. Rights and Rights-Holders

Class 4 (February 12)

Civil and Political Rights

What Are Civil and Political Rights?

- Read the International Covenant for Civil and Political Rights, Arts 1-27
- **A&G 157-165, 762-767** (ICCPR and Human Rights Committee)

Torture

- **A&G 238-264**
- Susan Marks and Andrew Clapham, “Torture”, in *International Human Rights Lexicon*
- “Trump Said ‘Torture Works’,” New York Times (Jan. 6, 2017)
- “Torture Can Be Useful,” New York Times (Dec. 5, 2016)
- “Lawsuit Aims to Hold Contractors Responsible,” New York Times (Nov. 27, 2016)

States of Emergency: Suspending Civil and Political Rights

- **A&G 394-403**
- Susan Marks and Andrew Clapham, “Terrorism”, in *International Human Rights Lexicon*

Class 5 (February 19)

Economic and Social Rights

What Are Economic, Social, and Cultural Rights?

- Read the International Covenant for Economic, Social, and Cultural Rights
- **A&G 275-299** (Intro, critiques), 305-6 (Sen); 322-330

Case Study: South Africa’s Constitutionalization of Economic and Social Rights

- **A&G 353-355**: Excerpts, South African Constitution
- **A&G 358-363** (*Government of South Africa v. Grootboom*)
- **A&G 363-369** (*Treatment Action Campaign v. Minister of Health*)
- **A&G 369-75** (*Mazibuko v. City of Johannesburg*)
- William Forbath, “Cultural Transformation: Deep Institutional Reform and ESR Practice: South Africa’s Treatment Action Campaign,” in Lucie White and Jeremy Perelman, *Stones of Hope* (51-90)

Class 6 (February 26)

Race, Culture, and Human Rights

American Anthropological Association Statement on Race (1998)

<http://www.americananthro.org/ConnectWithAAA/Content.aspx?ItemNumber=2583>

Discrimination Based on Race under International Human Rights Law

- Marks and Clapham, “Racism” in *International Human Rights Lexicon*
- David Weissbrodt and Connie de la Vega, *International Human Rights Law*

- Convention on the Elimination of All Forms of Racial Discrimination
- Rodolfo Stavenhagen, *"The Last Word: Reflections on Racism and Public Policy"*
- Human Rights Watch, "Racism and the Administration of Justice"
- *Simone André Diniz v. Brazil*, Inter-American Court of Human Rights, Report on the Merits

Case Study: Race and Human Rights in the United States and at the U.N.

- Margaret Somers and Christopher Roberts, "Toward a New Sociology of Rights," *Annual Review of Law and Social Science*, 392-94 (2008)
- Carol Anderson, *Eyes Off the Prize: The United Nations and the African-American Struggle for Human Rights, 1944-55* (2003), pp. 79-112
- Malcolm X, "The Bullet or the Ballot" (1964)
- Hope Lewis, "Race, Class and Katrina: Human Rights and (Un)natural Disaster" in *Environmental Justice in the New Millennium* (2008) (13pp)
- U.S. Human Rights Network, "Hurricane Katrina and Violations of ICCPR Articles 6 and 26: A Response to the Third Periodic Report of the United States of America to the Human Rights Committee" (excerpts)
- Michelle Alexander, Introduction, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010)

NO CLASS (March 5) (Spring Break)

Class 7 (March 12)

Women in Human Rights

Women's Rights as Human Rights

- Read the Convention on the Elimination of Discrimination Against Women
- **A&G 166-170; 177-87; 191-98**
- Dianne Otto, "Women's Rights," in *International Human Rights Law*, 316-332

Feminist Analysis of International Law and Human Rights

- Hope Lewis, "Embracing Complexity: Women's Rights in Critical Race Feminist Perspective," *Columbia Journal of Law and Gender* 12(3): 510-520 (2003)
- Hilary Charlesworth, "The Gender of *Jus Cogens*," *Human Rights Quarterly* 15(1): 63 (1993)
- Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics," *Harvard Human Rights Journal* 15(1) (2002)

When Rights Collide: "L'Affaire Foulard" Case Study

- Dunoff et al, 391-413
- **A&G 633-642** (*Sahin v. Turkey*)

Class 8 (March 19)

Group Rights

Introduction

- Robert McCorquodale, “Group Rights,” in *International Human Rights Law*, 333-354

Self-Determination

- Dunoff et al, Self-Determination, 119-128

Indigenous Rights

- Hannum, “The Emergence of New Human Rights Norms: The Rights of Indigenous Peoples and Maya Land Claims in Southern Belize,” 168-212
- **A&G 1010-1018** (*Sawhoyamaya Indigenous Community v. Paraguay*)
- Weissbrodt and de la Vega, *International Human Rights Law: An Introduction*
- *Case of Moiwana Community v. Suriname* (IACtHR, 2005)

Class 9 (March 26)

The Refugee Regime

Refugees and Human Rights

- UN Convention Relating to the Status of Refugees (1951)
- Protocol to the UN Convention on Refugees (1967)
- Alice Edwards, “International Refugee Law” in *International Human Rights Law*, 513-527
- Hannah Arendt, ‘We Refugees’ (1943) 30 *Menorah Journal* 69
- Richard Seymour, ‘Europe’s Lethal Fortress’, *Jacobin*, 3 September 2015
- Seyla Benhabib, “Lethal Confusions and Political Calculations: The European Refugee Crisis”
- Michelle Foster, “Introduction,” *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*, 1-26

Part III. Institutions, Advocacy, Enforcement

Class 10 (April 2)

Institutions and Enforcement: International, Regional, National

The United Nations System

- Jane Connors and Markus Schmidt, “United Nations,” in *International Human Rights Law* pp 359-396

Regional Systems

- Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010 (excerpts)

Europe's Human Rights System

- Hannum et al, 678-735 (Introduction to European system; Jurisdiction; Religion and Speech)
- **A&G 907-912** (On Jurisdiction: *Banković v. Belgium*)

Trying Human Rights in U.S. Courts: Alien Tort Statute Litigation

- *Filartiga v. Pena-Irala*
- *Sosa v. Alvarez Machain*
- *Kiobel v. Dutch Royal Petroleum*
- Samuel Moyn, "Why the Court Was Right About the Alien Tort Statute," *Foreign Affairs*
- Elizabeth Wilson, "A Rejoinder to Moyn", *Opinio Juris*

Class 11 (April 9)

Domestic Enforcement

Trying Human Rights in Domestic Courts: Universal Jurisdiction

- Introduction to Universal Jurisdiction: Hannum et al, 1003-1010
- *Eichmann* DRW 295-97
- United Kingdom, R v. Bow Street Stipendiary Magistrate (Bartle) ex parte Pinochet Ugarte (No. 3), *House of Lords* (D&M 793-96)
- Henry Kissinger, "The Pitfalls of Universal Jurisdiction"
- *Arrest Warrant Case*, International Court of Justice
- Glenn Frankel, "Belgian War Crimes Law Undone by its Global Reach: Cases Against Political Figures Sparked Crises"
- Andrés Cala, "Spain: A Human-Rights Avenger No Longer?"
- Sonya Dowsett and Emma Pinedo, "Spaniards Seek Justice in Argentina for Franco-era Crimes"

Class 12 (April 16)

Militarizing and Criminalizing Human Rights

Militarizing Human Rights: From Humanitarian Intervention to Responsibility to Protect

- UN Charter Art. 2, Art. 39-51
- Ramesh Thakur, "The Use of International Force to Prevent or Halt Atrocities: From Humanitarian Intervention to the Responsibility to Protect," in *The Oxford Handbook of International Human Rights Law* (Ed. by Dinah Shelton)
- Dunoff, Ratner, and Wippman, "Humanitarian Intervention in Kosovo" in *International Law*
- Ayça Çubukçu, 'The Responsibility to Protect: Libya and the Problem of Transnational Solidarity' (2013) 12:1 *Journal of Human Rights* 40-58
- David Rieff, "R2P, R.I.P." *New York Times*, Nov. 7, 2011
- Jon Western and Joshua Goldstein, "Humanitarian Intervention Comes of Age: Lessons from Somalia to Libya," *Foreign Affairs* (Nov. 1, 2011)

Criminalizing Human Rights: International Tribunals

- Marks and Clapham, “International Crimes,” 223-235
- **A&G 120-134** (Nuremberg)
- Judgment, International Military Tribunal at Nuremberg, Excerpts
- **A&G 1282-1293** (ICTY and ICTR)
- Ronald C. Slye and Beth Van Schaak, *International Criminal Law: The Essentials*
- The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi, International Criminal Court
- Procedural Background to the Libya Situation before the International Criminal Court (ICC)
- Hearing, Prosecutor v. Saif Al-Islam Gaddafi and Abdullah al-Senussi, Situation in Libya, Pre-trial Chamber, ICC, October 9, 2012 (transcript)
- Admissibility Decision, Prosecutor v. Saif Al-Islam Gaddafi and Abdullah al-Senussi, Situation in Libya, Pre-trial Chamber, ICC, May 31, 2013
- Alex Whiting, “South Africa’s ICC Withdrawal. Why? And What Now?,” *Just Security*
- Tor Krever, “Africa in the Dock: On ICC Bias”, *Critical Legal Thinking*

Class 13 (April 23)

Amnesties and Advocacy

What If We Didn’t Prosecute War Crimes?

- Thabo Mbeki and Mahmood Mamdani, “Courts Can’t End Civil Wars”, *New York Times*
- Gareth Evans, “Peace v. Justice”
- David Weissbrodt and Connie de la Vega, *International Human Rights Law*
- *AZAPO v. President of South Africa*, South African Constitutional Court, 25 July 1996
- William Schabas, “Amnesty, the Sierra Leone Truth & Reconciliation Commission and the Special Court for Sierra Leone”
- Anthony D. Romero, “Pardon Bush and Those Who Tortured”

Advocacy: The Politics and Practice of Human Rights Work

- **A&G 861-866; 884-887** (Fact-Finding Methodology)
- Human Rights Watch, “About Our Research”, <https://www.hrw.org/about-our-research>
- Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders*, **READ pp 102-110, 116-120**
- David Kennedy, “Spring Break”, **READ pp 1377-1387, 1390-94, 1403-1416**
- Case Study: Kony 2012
 - **Kony 2012 video** (30 minutes), <https://invisiblechildren.com/kony-2012/>
 - Schomerus, Mareike. 2015. “‘Make Him Famous’: The Single Conflict Narrative of Kony and Kony 2012” in *Advocacy in Conflict: Critical Perspectives on Transnational Activism*, edited by Alex de Waal, pp 142-163.
 - Cole, Teju. 2012. “The White-Savior Industrial Complex,” *The Atlantic Monthly*, March 21, 2012
 - Adam Branch, “Dangerous Ignorance: The Hysteria of Kony 2012”, *Al-Jazeera*, (March 12, 2012)

Optional

- Mahmood Mamdani (2007), “The Politics of Naming,” *London Review of Books*, 29:5

Part IV. New Challenges to Human Rights

Class 14 (April 30)

Does Human Rights Have Anything to Say About Inequality?

The Right to Development

- Declaration on the Right to Development
- Susan Marks and Andrew Clapham, “Development”, *International Human Rights Lexicon*
- Balakrishnan Rajagopal, “Right to Development and Global Governance” 35 *Human Rights Quarterly* 893 (2013)
- Peter Uvin, “From the Right to Development to the Rights-Based Approach,” *Development in Practice*, 17 (4/5) (Aug., 2007)
- A&G 1528-1545 (Development, Environment, and Human Rights)

Inequalities

- Margot E Salomon, “Why Should it Matter that Others Have More? Poverty, Inequality and the Potential of International Human Rights Law,” *Review of International Studies*, 37 (2011): 2137 – 2155.
- UN General Assembly, Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston (May 27, 2015)
- Samuel Moyn, “Do Human Rights Increase Inequality?” *The Chronicle of Higher Education* (May 26, 2015)
- OpenDemocracy Debate Contributions:
 - Introduction
 - Philip Alston
 - Radhika Balakrishnan and James Heinz
 - Chris Albin-Lackey
 - Gaby Oré Aguilar and Ignacio Saiz
- Joel R. Pruce, “Floors, Ceilings, and Beams: What’s Missing in Moyn’s Account of Inequality,” *Humanity Journal Blog*, June 23, 2015.

Class 15 (May 7)

Compliance and Critiques

Indicators and Compliance

- A&G 1225-1278

Critiques

- David Kennedy, “The International Human Rights Movement: Part of the Problem?”, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2004)

- Wendy Brown, “‘The Most We Can Hope For...’: Human Rights and the Politics of Fatalism,” *The South Atlantic Quarterly* 103:2/3, Spring/Summer 2004.
- Stephen Hopgood, “Preface”, *The Endtimes of Human Rights* (2013)